

May 12, 2015
OPINION 14-0061

71-1-1

MUNICIPAL FIRE & POLICE CIVIL SERVICE

La. R.S. 33:2214

Patrick McWilliams
Chief of Police
Bossier City Police Department
Post Office Box 6216
Bossier City, LA 71171

Each employee of the police department is entitled to 52 weeks of sick leave per calendar year, even when the disability is not work related, as long as conditions actually warrant.

Persons filling the following positions in the Bossier City Police Department, who were hired on or after January 1, 1996, do not constitute "employees of the police department" for the purposes of La. R.S. 33:2214(B)(1): Secretary to the Police Chief, Police Departmental Records Clerk, Public Information Officer, Police Communications Officer I, Police Communications Officer II, and Chief of Communications.

Dear Chief McWilliams:

Our office received your request for an opinion regarding La. R.S. 33:2214(B)(1) which governs sick leave for employees of certain municipal police departments,¹ including the police department for Bossier City. Louisiana Revised Statute 33:2214(B)(1) states:

Each employee of the police departments of the municipalities covered by this Subpart, except the city of Westwego, shall be entitled to and given with full pay a sick leave aggregating not less than fifty-two weeks during any calendar year when the conditions actually warrant. Any police department employee who draws such full pay during sick leave shall have such pay decreased by the amount of worker's compensation benefits actually received by such employee.

You have asked about the application of this statute in the following situations.

- An employee of the police department goes on sick leave for an injury on February 1, 2015 returns to work on June 1, 2015 and goes back on sick leave for the same injury on July 1, 2015. Is the employee entitled to a new 52 week sick leave period since he returned to work between leave periods?
- What if the subsequent leave is for a separate injury rather than a continuation of the first?

¹ La. R.S. 33:2214 is part of Chapter 4, Part III, Subpart B, of Title 33 which is applicable to police departments of municipalities having a population of not less than twelve thousand nor more than two hundred fifty thousand persons. See La. R.S. 33:2211 (A). According to the latest Census data, Bossier City is within this range of population parameters

- Does the 52 weeks sick leave apply when an injury is the result of an employee's own negligence?

You subsequently sent an additional request asking what types of employees are eligible for the sick leave granted by La. R.S. 33:2214(B)(1). Specifically, you have asked whether all employees of the police department are entitled to the sick leave benefits granted by La. R.S. 33:2214(B)(1) or whether the sick leave is limited to certain positions.

La. R.S. 33:2214(B)(1) grants each employee of the police department of a municipality 52 weeks of sick leave per calendar year when the conditions actually warrant. The statute does not restrict the amount of sick leave available per injury. If an employee goes on sick leave on February 1, 2015 and returns to work on June 1, 2015 and then goes back on sick leave for the same injury on July 1, 2015 they are still entitled to the remaining 35 weeks of sick leave for the 2015 year, if the conditions actually warrant. This 52 week sick leave period begins anew each calendar year, and if the same employee is injured in 2016, the employee is entitled to 52 weeks sick leave for the 2016 year, if the conditions actually warrant. It is immaterial whether the subsequent period is for the same injury or a new injury since the statute does not contain such a restriction.

We note that where appropriate the Board of Trustees shall retire from service in the police department a member found by a majority of the vote to have acquired a permanent or temporary physical or mental disability while in the performance of his duties, as determined by the report of the department physician.²

Pursuant to La. R.S. 33:2500(13), the appointing authority may also remove any employee from the service if the employee develops "any defect of physical condition which precludes the employee from properly performing the duties of his position, or the development of any physical condition that may endanger the health or lives of fellow employees."

You have additionally asked whether all employees are eligible for the 52 weeks of sick leave granted by La. R.S. 33:2214(B)(1). On this question, we note that Act 446 of the 1995 Louisiana Legislative Session amended and reenacted La. R.S. 33:2214(B)(2) to provide as follows:

(2) An employee of the police department, for purposes of this Subsection, shall not include personnel employed primarily to perform purely clerical or nonenforcement duties, including but not limited to the following: typographical duties, office machine operators, switchboard operators, filing clerks, stenoclerk, stenographers, and secretaries.

² La. R.S. 11:3514.

Following this revision, whether the provisions of La. R.S. 33:2214(B)(1) apply to an employee, therefore, depends on the employee's duties and the date of hire.

Louisiana Revised Statute 33:2214 excludes from the definition of "employee of the police department," personnel employed by the department to perform duties that are purely clerical or nonenforcement. These positions and duties include, but are not limited to, typographical duties, office machine operators, switchboard operators, filing clerks, stenoclerk, stenographers, and secretaries.³ However, employees hired prior to January 1, 1996, the effective date of Act 446, are grandfathered in under the former law and are still entitled to the 52 week sick leave benefit, regardless of position or duties.⁴

In subsequent correspondence you have asked whether the following personnel are eligible for the sick leave granted by La. R.S. 33:2214(B)(1): Secretary to the Police Chief, Police Departmental Records Clerk, Public Information Officer, Police Communications Officer I, Police Communications Officer II, and Chief of Communications. At our request you have sent in the civil service descriptions of these positions. The primary duties of the positions you have inquired about include, but are not limited to:

- Secretary to the Chief of the Police- clerical work, typing, transcription, and preparing reports.
- Police Departmental Records Clerk- record keeping, file management, and assisting with telephone calls and information requests.
- Public Information Officer- serving as the department's representative to media, advising the department on matters affecting the public image, reviewing and writing reports as necessary, and serving as an instructor in the area of public information, public relations, and public speaking.
- Police Communications Officer I and II- answering telephones for the police department, dispatching duties, relaying messages and information to department personnel, completing forms and records, providing training on communications equipment, and testing communications equipment.
- Chief of Communications- directing operations of the police communications division, supervising communications personnel in their duties, preparing a budget for the communications division, and preparing and maintaining communication division records and reports.

As evidenced by the job descriptions of the above personnel, the duties of these positions are primarily clerical and/or nonenforcement, and therefore it is the opinion of this office that a person employed in any of these positions should not be considered an "employee of the police department" for the purposes of La. R.S. 33:2214(B)(1).

³ La. R.S. 33:2214 (B)(2).

⁴ La. Atty. Gen. Op. No. 99-254.

As a consequence, employees in these categories of positions would not be entitled to the sick leave provided by La. R.S. 33:2214. Nevertheless, we recognize that Bossier City Municipal Fire and Police Civil Service Board Rule XII(B)(1) provides an alternative form of 52 week sick leave for employees of the classified civil service. Rule XII(B)(1) states:

Each employee of the classified civil service shall be entitled to and given, with full pay, sick leave aggregating not less than fifty-two weeks during a calendar year for any sickness or injury or incapacity not brought about by the employee's own negligence or culpable indiscretion.

The Bossier City Municipal Fire and Police Civil Service Board has thus chosen to provide a 52 week sick leave period to each employee of the classified civil service, regardless of position or duties. Our opinion only addresses the question of whether a person in any of the above positions are to be considered "employees of the police department" pursuant to La. R.S. 33:2214(B)(1), and does not impact the more restrictive sick leave provided to employees of the classified civil service by Rule XII.

Finally, you would like to know whether the sick leave granted by La. R.S. 33:2214(B)(1) is available to an employee when the injury is the result of an employee's own negligence. Bossier City Municipal Fire and Police Civil Service Board Rule XII(B)(1) limits classified civil service sick leave to, "sickness or injury or incapacity not brought about by the employee's own negligence or culpable indiscretion." However, Louisiana jurisprudence has found that the 52 weeks sick leave granted by La. R.S. 33:2214 (B)(1) is available to an employee "when the conditions actually warrant," regardless of whether or not the sickness or injury is work related.⁵

In *Lasyone v. Phares*, the chief of police refused to extend the plaintiff's sick leave benefits and argued it was within his discretion to terminate sick leave.⁶ In addressing this argument the First Circuit Court of Appeal stated:

We hold that the words "when conditions actually warrant" call for a factual determination not a discretionary call on the part of the chief of police. Any decision on the part of the chief of police based on the facts depends on the evidence available. The *Hoffpauir* case, however, determined that "when conditions actually warrant" applies to the officer's physical condition or disability, "whether or not the disability occurred within the performance of the officer's duties." *Hoffpauir*, 241 So.2d at 70. The opinion of the employee's treating physician is to be given great weight when determining "when conditions actually warrant." We conclude that the statutory language refers not to the discretion of the chief of police to terminate sick leave pay but to whether or not physical disability exists to

⁵ See La. Atty. Gen. Op. Nos. 00-284, 91-0110, 80-471, and 78-1379.

⁶ *Lasyone v. Phares*, 01-1785, (La.App. 1 Cir 5/22/02) 818 So.2d 1068; writ denied 02-1711, (La. 10/14/02), 827 So.2d. 423.

justify the application of the mandatory provisions of La. R.S. 33:2214(B).
It is a fact question, subject to judicial review.⁷

Our office has also addressed this issue in several opinions. In La. Atty. Gen. Op. No. 91-110, our office, relying on *Hoffpauir*, stated that La. R.S. 33:2214(B) requires that the 52 weeks of sick leave be allowed “if the facts warrant, regardless of whether or not the sickness or injury is work related.” In La. Atty. Gen. Op. No. 93-677, we stated that the determination of whether conditions actually warrant the taking of sick leave in any particular situation is one which must be made by the employer with the understanding that when applicable the opinion of the employee's treating physician is to be given great weight. That opinion further observed that municipal police departments could establish rules, regulations, or policies which address the use of sick leave and the conditions which warrant the use of sick leave. In La. Atty. Gen. Op. No. 96-190, our office determined that a police officer could use his statutory sick leave to donate bone marrow to a family member. In that opinion we noted that the granting of sick leave is subject to any reasonable local rules, regulations, or policies established by the municipality and recognized that a municipality could adopt regulations concerning leave for procedures not necessitated by illness or injury. However, a local regulation that would limit the granting of sick leave to procedures that are not necessitated by illness or injury, but are nonetheless necessary (*i.e.* maternity), would be determined to be an unreasonable regulation. Accordingly, it is our opinion that the 52 weeks sick leave granted by La. R.S. 33:2214 (B)(1) is available to an employee “when the conditions actually warrant,” regardless of whether or not the sickness or injury is the result of the employee's own negligence.

Pursuant to Louisiana jurisprudence, an employee is entitled to sick leave even when the disability is not work related, as long as conditions actually warrant. Whether the conditions actually warrant is a factual determination which must be made on a case by case basis and depends on the officer's physical condition or disability; not when or how the injury occurred.⁸ In making this determination, the employer may consider any reasonable local rules, regulations, or policies concerning the use of sick leave.

⁷ *Lasyone*, 818 So.2d at 1072; citing *Hoffpauir v. City of Crowley*, (La.App. 3 Cir. 11/2/1970) 241 So.2d 67; *writ denied* (La. 1/18/1971) 242 So.2d. 578.

⁸ We do not believe this logic would extend to an injury that is the result of an intentional injury incurred with the intent to fraudulently obtain sick leave.

We hope that this opinion has adequately addressed the questions you have submitted. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY: _____
Emily Andrews
Assistant Attorney General

JDC: EGA